

# **EXHIBIT 2**

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Monday, April 21, 2014, 9:18:17 PM

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PLAINTIFF'S EXHIBIT NO. 3010

United States District Court  
Northern District of California  
No. 12-CV-00630-LHK (PSG)

Apple Inc. v. Samsung Elecs.

Date Admitted: \_\_\_\_\_ By: \_\_\_\_\_

Maccoun, James - 8/16/2013

1 CLIP (RUNNING 00:15:22.134)

Good morning, Mr. Maccoun. ...

MACCOUN

45 SEGMENTS (RUNNING 00:15:22.134)



1. PAGE 5:08 TO 5:09 (RUNNING 00:00:02.372)

08 Q. Good morning, Mr. Maccoun.  
09 A. Good morning.

2. PAGE 5:19 TO 5:22 (RUNNING 00:00:11.103)

19 Who are you currently employed by?  
20 A. I'm employed by Google Inc. 09:39  
21 Q. How long have you been employed by Google?  
22 A. Since 2011.

3. PAGE 6:04 TO 6:05 (RUNNING 00:00:02.914)

04 Q. Are you an attorney?  
05 A. Yes, I am. 09:38

4. PAGE 7:21 TO 7:24 (RUNNING 00:00:10.137)

21 Q. Do you understand that you are appearing today  
22 as a corporate witness on behalf of Google to give  
23 testimony in response to several of the topics in this  
24 notice?

5. PAGE 8:03 TO 8:04 (RUNNING 00:00:06.793)

03 THE WITNESS: I understand I'm here in response  
04 to the -- this subpoena that I have in my hands.

6. PAGE 13:09 TO 13:15 (RUNNING 00:00:23.233)

09 Q. I'm not sure that I understand your answer. So  
10 let me just ask you, Topic 28 asks for any agreement  
11 with or request by Samsung to indemnify it for defense  
12 costs and/or liability related to this litigation. My  
13 question to you is: Is there any agreement with Samsung  
14 to indemnify it for defense costs or liability related  
15 to this litigation? 09:51

7. PAGE 13:18 TO 13:21 (RUNNING 00:00:17.377)

18 THE WITNESS: There is a Mobile Applications  
19 Development Agreement, and I understand that to be an  
20 agreement between Google Inc. and Samsung relating to  
21 indemnity and defense. 09:52

8. PAGE 14:08 TO 14:11 (RUNNING 00:00:09.072)

08 Pursuant to that agreement that you just  
09 referred to, has Google agreed to indemnify Samsung for  
10 any liability or defense costs associated with this  
11 litigation? 09:52

9. PAGE 14:16 TO 14:19 (RUNNING 00:00:35.986)

16 THE WITNESS: So I understand that Google is  
17 defending Samsung and that this is reflected by emails.  
18 The -- I think that's probably a good way to  
19 characterize it.

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10. PAGE 15:09 TO 15:14 (RUNNING 00:00:03.391)

09 MR. STONE: Would you please mark that as  
10 Exhibit 2, please.  
11 (Exhibit 2, Email string from Susan Kim to  
12 Daniel.ko@samsung.com, 12/7/12,  
13 GOOG-NDCAL630-00069118 - 124, marked for  
14 identification.)

09:55

11. PAGE 15:15 TO 15:18 (RUNNING 00:00:07.143)

15 BY MR. STONE:  
16 Q. Mr. MacCoun, have you seen what's been marked  
17 as Exhibit 2 before?  
18 A. Yes, I have.

09:55

12. PAGE 17:19 TO 17:23 (RUNNING 00:00:03.920)

19 MR. STONE: Mark this as Exhibit 3, please.  
20 (Exhibit 3, Letter to Andy Rubin from  
21 JaeHyoung Kim, 4/5/12,  
22 GOOG-NDCAL630-00065923 - 24, marked for  
23 identification.)

13. PAGE 17:24 TO 18:09 (RUNNING 00:00:38.443)

24 BY MR. STONE:  
25 Q. Do you recognize what's been marked as.  
00018:01 A. Exhibit 3, Mr. MacCoun?  
02 A. Yes, I do.  
03 Q. What is it?  
04 A. It's a letter from Samsung to Google.  
05 Q. And was this letter Samsung's initial request  
06 to be indemnified for this litigation by Google?  
07 A. I'm not aware of any earlier request.  
08 Q. This is the first request that you're aware of;  
09 is that correct?

09:59

09:59

14. PAGE 18:11 TO 18:12 (RUNNING 00:00:03.169)

11 THE WITNESS: This is the first request that  
12 I'm aware of, yes.

15. PAGE 19:09 TO 19:13 (RUNNING 00:00:16.410)

09 Q. What is the Mobile Application Distribution  
10 Agreement? I guess you referred to it as the M-A-D-A or  
11 MADA.  
12 A. It's an agreement between Google and Samsung.  
13 Q. What's the purpose of the agreement?

10:01

16. PAGE 19:18 TO 19:25 (RUNNING 00:00:25.126)

18 THE WITNESS: Well, I suppose it had a variety  
19 of purposes. But one of them is to provide  
20 applications -- for Google to provide applications to  
21 Samsung. But there were other purposes that are set  
22 forth in the agreement.  
23 BY MR. STONE:  
24 Q. And I take it one provision of the agreement  
25 relates to indemnification of Samsung by Google?

10:01

10:02

17. PAGE 20:03 TO 20:05 (RUNNING 00:00:06.131)

03 THE WITNESS: So I recall that the MADA does  
04 have provisions relating to defense and indemnification.  
05 BY MR. STONE:

10:02

18. PAGE 20:06 TO 20:07 (RUNNING 00:00:03.410)

06 Q. And the same is true for the Strategic

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07 Marketing Agreement?

19. PAGE 20:10 TO 20:15 (RUNNING 00:00:19.798)

10 THE WITNESS: Well, I -- it would be helpful to 10:02  
11 see it. But in general, I seem to recall that the  
12 Strategic Marketing Agreement simply incorporated the  
13 provisions of the MADA -- or stated something to the  
14 effect that the MADA would be similarly used. Something  
15 like that.

10:02  
10:02

20. PAGE 20:16 TO 20:21 (RUNNING 00:00:03.767)

16 MR. STONE: Would you please mark this as  
17 Exhibit 4.  
18 (Exhibit 4, Letter to JaeHyoung Kim and  
19 Seong-Woo Kim from Allen Lo, 5/21/12,  
20 GOOG-NDCAL630-00065935 - 37, marked for  
21 identification.)

21. PAGE 20:22 TO 21:07 (RUNNING 00:00:48.844)

22 MR. STONE: Exhibit 3, which we were just  
23 looking at, was dated April 5th. And it was a letter of  
24 JaeHyoung Kim of Samsung to Mr. Andy Rubin of Google.  
25 Exhibit 4 is a letter from Allen Lo of Google,  
00021:01 Deputy General Counsel Patents and Patent Litigation, to  
02 JaeHyoung Kim. And it's dated May 21, 2012. Subject  
03 is: "Apple litigation alleged patent infringement."  
04 Q. Have you seen this exhibit before?  
05 A. Yes, I have.  
06 Q. Is this Google's response to Samsung's request  
07 for indemnification, dated April 5th, 2012?

10:03  
10:04

22. PAGE 21:10 TO 21:12 (RUNNING 00:00:07.987)

10 THE WITNESS: The document does state, in the 10:04  
11 first sentence, that it's a response to the letter of  
12 April 5th, 2012.

23. PAGE 21:14 TO 21:16 (RUNNING 00:00:08.833)

14 Q. Okay. In this letter, did Google agree to  
15 indemnify Samsung for any of the claims in the  
16 litigation?

10:04

24. PAGE 21:21 TO 22:01 (RUNNING 00:00:17.135)

21 THE WITNESS: So as I read it, Google's  
22 essentially offering to defend Samsung to the MADA and  
23 does offer to defend some -- some claims.  
24 BY MR. STONE:  
25 Q. Which claims does Google offer to defend in  
00022:01 this letter?

10:05

25. PAGE 22:02 TO 22:04 (RUNNING 00:00:11.362)

02 A. It seems to be stated in this last full  
03 paragraph of the second page that -- more or less, the  
04 parameters.

26. PAGE 22:05 TO 22:16 (RUNNING 00:00:59.466)

05 Q. Are you referring to the sentence that states:  
06 "We believe that Apple's allegations in Apple Inc.  
07 Versus Samsung Electronics Company Limited, et al., Case  
08 Number 511CV00630LHK, regarding asserted U.S. Patent  
09 Number" -- and then it refers to the '959 patent and the  
10 '604 patent -- "may fall within this obligation"?  
11 A. Yeah, but I believe that, more or less, is the  
12 essence of this.

10:06  
10:07

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13 Q. So is it your understanding that in this  
14 letter, Google's offering to indemnify Samsung for the  
15 claims made with respect to those two patents but not to 10:07  
16 any other claims in litigation?

27. PAGE 22:18 TO 22:20 (RUNNING 00:00:22.839)

18 THE WITNESS: So I believe that there is -- in  
19 the December -- December 5th email, there may be  
20 additional claims that Google is offering to defend. 10:08

28. PAGE 27:16 TO 27:20 (RUNNING 00:00:17.036)

16 Q. So Google is offering to defend and indemnify  
17 Samsung with respect to the claims regarding the '959  
18 and '604 patents and is requesting that Samsung tender  
19 the defense of those claims to it? Is that what you 10:19  
20 understand this letter is doing?

29. PAGE 27:22 TO 28:02 (RUNNING 00:00:33.019)

22 THE WITNESS: So Google is asking Samsung to  
23 tender the defense so that Google can defend Samsung.  
24 And that's really what I see this sentence saying.  
25 BY MR. STONE: 10:19  
00028:01 Q. When you say "tender the defense," what does  
02 that mean, to tender the defense?

30. PAGE 28:06 TO 28:07 (RUNNING 00:00:03.596)

06 THE WITNESS: This is a requirement that's set  
07 forth in the MADA.

31. PAGE 28:09 TO 28:09 (RUNNING 00:00:01.763)

09 Q. And what is that requirement?

32. PAGE 28:15 TO 28:18 (RUNNING 00:00:25.201)

15 THE WITNESS: And so I understand it to be a 10:20  
16 legal term of art, more or less, allowing the indemnitor  
17 to control the litigation and defense. That's more or  
18 less a summary of the idea.

33. PAGE 32:18 TO 33:21 (RUNNING 00:02:27.411)

18 Q. Mr. MacCoun, I'd like to turn back to what was  
19 previously marked as Exhibit 2 to your deposition,  
20 Exhibit 2, which is the December email. Do you have 10:31  
21 that?

22 A. I do (indicating).  
23 Q. On the second page, there is an email in the  
24 middle from Susan Kim of Google, dated December 5th,  
25 2012, re: Google indemnification for Samsung. 10:31  
00033:01 Do you see that?

02 A. Yes.  
03 Q. That's an email to Daniel Ko of Samsung; is  
04 that correct?

05 A. It appears to be. It's -- I see his name in 10:32  
06 another email.

07 Q. Okay.  
08 A. I see his last name in another email, which is  
09 part of a set.

10 Q. Okay. And do you understand this email to set 10:32  
11 forth the terms of indemnification for Samsung for this  
12 litigation that Google has offered?

13 A. So the -- the terms are set forth in the MADA.  
14 But this is something which is Google offering to do in  
15 relationship to the MADA. 10:33

16 Q. In connection with the indemnification

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17 provision in the MADA, in this litigation Google is  
18 offering to indemnify Samsung as set forth in this  
19 email; correct?  
20 A. So Google's offering to defend and indemnify, 10:33  
21 as set forth in this email, pursuant to the MADA.

**34. PAGE 33:22 TO 34:05 (RUNNING 00:00:34.710)**

22 Q. Okay. The first paragraph of this email says,  
23 "For the '959 and '604 patents, Google will indemnify  
24 Samsung for Apple's allegations against the Quick Search  
25 Box."

00034:01 Is that your understanding, that Google is  
02 offering to indemnify Samsung for the allegations in  
03 this case regarding the Quick Search Box?  
04 A. So this is an offer that Google made. I have  
05 no reason to believe that that has changed. 10:34

**35. PAGE 34:16 TO 34:18 (RUNNING 00:00:10.667)**

16 Q. Okay. Has Samsung tendered to Google the  
17 defense of the claims against the Quick Search Box with  
18 respect to the '959 and '604 patents?

**36. PAGE 34:20 TO 34:20 (RUNNING 00:00:02.414)**

20 THE WITNESS: So far as I know, it has. 10:35

**37. PAGE 34:22 TO 35:06 (RUNNING 00:00:50.638)**

22 Q. Well, if you turn to the next page of the  
23 exhibit, the one ending in Bates Number 120, this is an  
24 email, dated November 25th, 2012, from Daniel Ko at  
25 Samsung to Susan Kim and Chester Day of Google; correct? 10:36

00035:01 Do you see that?  
02 A. Yes, I do.  
03 Q. And Mr. Ko of Samsung writes in this email  
04 that -- he's summarizing what Samsung and Google agreed  
05 so far regarding the Google's indemnification in this  
06 case; is that right? 10:36

**38. PAGE 35:09 TO 35:11 (RUNNING 00:00:14.238)**

09 THE WITNESS: So there is a sentence which  
10 states: "I summarized what Samsung and Google agreed so  
11 far regarding the Google indemnification." 10:36

**39. PAGE 36:12 TO 36:14 (RUNNING 00:00:08.573)**

12 Q. Do you understand that Google has control and  
13 authority over the defense of the '959 and '604 patents  
14 in this litigation?

**40. PAGE 36:18 TO 36:19 (RUNNING 00:00:03.412)**

18 THE WITNESS: I have no reason to believe  
19 that's not the case.

**41. PAGE 37:17 TO 37:20 (RUNNING 00:00:16.045)**

17 Q. To prepare for your deposition today, did you  
18 make any inquiry into whether Google has tendered the  
19 defense of any of the claims in this litigation pursuant  
20 to the MADA indemnification provision? 10:41

**42. PAGE 37:24 TO 38:04 (RUNNING 00:00:17.036)**

24 THE WITNESS: So I believe that, generally  
25 speaking, Samsung has made a tender and that Google is  
00038:01 defending with respect to those two patents. But I  
02 don't have specific knowledge. 10:41

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03 And in answer to your question, I did not make  
04 a specific inquiry into that.

**43. PAGE 40:04 TO 40:14 (RUNNING 00:00:56.989)**

04 Q. Okay. Paragraph 3 of Susan Kim's December 5,  
05 2012, email relates to the '414 patent. It states:  
06 "Google will indemnify Samsung for Apple's allegations  
07 against Gmail pursuant to the terms of the MADAs."

08 Is it your understanding that Google has  
09 offered to indemnify Samsung for Apple's allegations  
10 against Gmail with respect to the '414 patent?

11 A. So I -- I understand that this email offered  
12 that and -- basically to defend and, if necessary,  
13 indemnify. I don't have any reason to believe that's  
14 changed.

10:45

10:45

**44. PAGE 46:08 TO 46:12 (RUNNING 00:00:28.225)**

08 Q. With respect to paragraphs 1, 2 and 3 in  
09 Susan Kim's December 5th email related to the '959,  
10 '604, '502, and '414 patents, each of those paragraphs  
11 states: "Google will indemnify Samsung for certain of  
12 Apple's allegations."

10:57

**45. PAGE 46:15 TO 46:18 (RUNNING 00:00:25.000)**

15 THE WITNESS: So I see it as a general term  
16 relating to providing a defense against claims, and then  
17 can mean other things depending on the outcome of  
18 litigation.

10:58

TOTAL: 1 CLIP FROM 1 DEPOSITION (RUNNING 00:15:22.134)